

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JUAN PADILLA-MIRANDA,

Defendant.

CASE NO. 8:06CR402

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”). Although the government has adopted the PSR (Filing No. 56), the government’s attorney has indicated that the government will object to the PSR. Specifically, the government objects to the drug quantity set out in the PSR and has indicated that the Defendant has met the criteria for the safety valve. See “Order on Sentencing Schedule,” ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement recommends a base offense level of 30 based on at least 35 but less than 50 grams methamphetamine (actual). The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 30. Additionally, the Defendant qualifies for the protection of the safety valve.

IT IS ORDERED:

1. The Court's tentative findings are that the government's anticipated objections to the Revised PSR are granted;

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 13th day of November, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge